

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Request to Extend the Substantial Service	)	
Deadline for Educational Broadband Service	)	WT Docket No. 11-22
Licensees to November 1, 2011	)	

**Comments of Clearwire Corporation**

Clearwire Corporation ("Clearwire"), in response to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission") on February 11, 2011 in the above-referenced matter,<sup>1</sup> hereby submits its comments in support of the request to extend the substantial service deadline for Educational Broadband Service ("EBS") licensees from May 1, 2011 to November 1, 2011 filed by the National EBS Association ("NEBSA") and the Catholic Television Network ("CTN"). NEBSA and CTN are the primary representative organizations of the EBS community.<sup>2</sup> For the reasons set forth below, there is good cause for a limited, six month long waiver, the grant of which will avoid the imposition of undue burden on EBS licensees.<sup>3</sup>

---

<sup>1</sup>*In the Matter of Request to Extend the Substantial Service Deadline for Educational Broadband Service Licensees to November 1, 2011*, Public Notice, WT Doc. No. 11-22 (rel. Feb. 11, 2011).

<sup>2</sup> Request for Waiver of Section 27.14 (o) of the Commission's Rules, the National EBS Association and the Catholic Television Network (filed Feb. 9, 2011) ("Waiver Request") at 1.

<sup>3</sup> NEBSA and CTN requested that the May 1, 2011 deadline be waived for all EBS licensees so as to avoid the need for educators to use scarce resources to prepare and prosecute individual extension requests and to spare the Commission staff the need to evaluate and rule on such individualized requests. They, therefore requested pursuant to Section 1.3 of the Commission's Rules that the Commission also waive the requirement of Section 1.925 that requests for waiver in the Wireless Radio Services be submitted on a Form 601, 603 or 605 by each EBS licensee and the requirement of Section 1.946(e) that requests for extension of construction requirements be filed on Form 601. See 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown"). Clearwire also supports these requests.

## **I. Background**

Clearwire operates open, Internet-Protocol ("IP") 4G wireless broadband networks in markets across the United States and Europe. Clearwire's portfolio of 2.5 GHz spectrum consists of Broadband Radio Service ("BRS") licenses and spectrum leasing arrangements with numerous EBS licensees. Its networks provide communities with high-speed residential and mobile Internet and interconnected voice over Internet protocol (VoIP) services. Clearwire has over 4.4 million wireless broadband subscribers – an increase of 540% from 2009 -- and is rapidly deploying 4G broadband wireless service that utilizes the WiMAX technology standard in new markets and converting its pre-WiMAX markets to the 4G standard.<sup>4</sup> By the end of 2010, Clearwire's 4G mobile broadband services covered an estimated 119 million pops in 71 markets, an increase of 250% from 2009 due to a record build of more than 10,000 new cell sites, making Clearwire one of the fastest growing wireless companies in the U.S.

## **II. Discussion**

With the nationwide transition to the new 2.5 GHz band plan that accommodates both data and video uses nearly complete and widespread deployment of broadband technology well underway, EBS is playing an increasingly important role both as a platform for the launch of wireless broadband services and in the transformation of how educational services are delivered in the United States. As the Commission had hoped, a symbiotic

---

<sup>4</sup> Clearwire provides 4G WiMAX service in 71 markets, including New York, Syracuse and Rochester, N.Y.; Miami, FL; Washington, DC; Boston, MA; Atlanta and Milledgeville, Ga.; Baltimore, Md.; Boise, Idaho; Chicago, Ill.; Las Vegas, Nev.; St. Louis and Kansas City, Mo.; Philadelphia, Harrisburg, Reading, Lancaster and York, Pa.; Charlotte, Raleigh, and Greensboro, N.C.; Honolulu and Maui, Hawaii; Seattle, Tri-Cities, Yakima and Bellingham, Wash.; Salem, Portland and Eugene, Ore.; Los Angeles, Merced and Visalia, Calif.; Dallas/Ft. Worth, Houston, San Antonio, Austin, Abilene, Amarillo, Corpus Christi, Killeen/Temple, Lubbock, Midland/Odessa, Waco and Wichita Falls, Texas; Richmond, Va.; and Salt Lake City, Utah.

relationship has developed between EBS and commercial operators/lessees that is increasingly providing educators with much needed financial support and commercial operators with access to broadband spectrum that can support commercial networks and new, innovative educational use.<sup>5</sup> Approximately one-half of the spectrum used in these commercial networks is leased from EBS licensees.

In has been only five short years since the EBS and BRS substantial service rule – Section 27.14(o) -- was first adopted.<sup>6</sup> Due to the prescience of the Commission, the band has been overhauled from a little-used home for wireless cable services to a launch pad for the country's first, 4G mobile wireless broadband networks. The transition to the new 2.5 GHz band plan to permit broadband services has been largely completed. Clearwire and other commercial operators such as Digital Bridge Communications, Xanadoo and Nextwave have launched commercial operations in the band. Sprint, Comcast and Time Warner are all utilizing the Clearwire network to provide their own 4G services. The broadband service in 2.5 GHz band comprises the most widely deployed non-legacy wireless network in the nation.

In a large number of markets across the country, Clearwire and other commercial operators leasing EBS spectrum will be providing commercial service covering at least 30% of EBS Geographic Service Areas ("GSAs") by May 1, 2011. Thus, their affiliated EBS

---

<sup>5</sup> See, e.g. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165, 14168 (2004) ("acknowledging that revised BRS/EBS rules "will improve the ability of educators to serve America's students thereby facilitating educators' use of our national spectrum resource."); Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Order On Reconsideration And Fifth Memorandum Opinion And Order And Third Memorandum Opinion And Order And Second Report And Order*, 21 FCC Rcd 5606, 5705 (2006) ["BRS/EBS Second R&O"].

<sup>6</sup> See *BRS/EBS Second R&O*, 21 FCC Rcd at 5718-36.

licensees will be in a position to demonstrate that they meet the substantial service safe harbor of Section 27.14(o)(1)(ii).<sup>7</sup>

Of course, educators are unable to begin making educational use of the new broadband facilities being deployed in the 2.5 GHz band by their commercial partners until those facilities are constructed and become operational. A brief extension request is warranted because the GSAs of many EBS licensees (particularly those in less urban areas of the country) are not yet incorporated within the footprint of commercial networks. In the majority of these cases, the EBS licensee has contracted with its commercial partner, such as Clearwire, to provide the facilities necessary for the provision of substantial service. In markets where Clearwire has not yet deployed commercial service, either for infrastructure, technical or economic reasons Clearwire is constructing broadband networks that will permit its EBS licensee/lessors to provide broadband service and meet the EBS substantial service safe harbor of Section 27.14(o)(2). Clearwire anticipates that in many cases, these networks will be constructed and operational by May 1, 2011. In other cases, however, Clearwire is facing challenges with regard to construction completion of these networks.

For example, while Clearwire utilizes microwave backhaul in its commercial markets, that option is typically not feasible for smaller networks. Instead, more traditional forms of backhaul, such as leasing T1s from the local exchange carrier, are the norm. But, as the Commission has repeatedly recognized in the context of its development of a National

---

<sup>7</sup> 47 C.F.R. § 27.14(o)(1)(ii). The Commission has made clear that where a commercial lessee has provided sufficient service to satisfy a substantial service safe harbor, its licensee/lessor has satisfied the substantial service requirement. *See id.* at § 27.14(o)(3) (“An EBS or BRS licensee may be deemed to provide substantial service through a leasing arrangement if the lessee is providing substantial service under paragraph (o)(1) of this section.”).

Broadband Plan, middle mile and backhaul facilities are often difficult to obtain outside of urban centers and Clearwire has experienced delays and other difficulties in obtaining these facilities.<sup>8</sup> In other cases, Clearwire has experienced permitting delays that have hampered cell siting efforts. These difficulties have a direct impact on some EBS licensees. The problem these EBS licensees face, in a nutshell, is that there may not be adequate time between network activation and May 1, 2011 for them to commence the sort of educational usage that is a prerequisite to invocation of the Section 27.14(o)(2) EBS safe harbor. It necessarily takes time following the activation for the new broadband capabilities to be integrated into a licensee's educational endeavors. By creating a six month bridge from the current substantial service deadline to Nov. 1, 2011 as requested the Commission can permit EBS licensees, which may begin using new broadband network facilities around the May 1 deadline -- which falls towards the end of a school year -- to have sufficient time to launch educational use programs that can be fully incorporated into schools' curriculum at the beginning of the upcoming school year.

Although, as noted above, many EBS licensees are positioned to submit their substantial service showings by May 1, 2011, grant of this waiver request will avoid the need for individual EBS licensees to devote scarce resources to the preparation, submission and prosecution of individualized FCC forms requesting additional time to comply with Section 27.14(o), as would otherwise be required pursuant to Section 1.925 or Section 1.946 of the Commission's Rules. As noted in the Waiver Request, it also will spare the

---

<sup>8</sup> In some cases, Clearwire has been waiting months for a Firm Order Commitment ("FOC") date from the LEC regarding the installation of T1 facilities. Although FOC dates are usually assigned within 60 to 90 days, Clearwire has a number of outstanding FOC requests that have languished well beyond that time frame with no firm indication from the LEC of when they will be fulfilled. In addition, other FOC dates are being returned with dates that are unreasonably delayed or subject to lengthy special construction processes.

Commission's staff the burden of processing, reviewing and ruling upon such individualized submissions.

### III. Conclusion

Given the unusual factual circumstances facing EBS licensees set forth in the Waiver Request, Clearwire agrees that strict application of the May 1, 2011 Section 27.14(o) substantial service deadline to EBS licensees would be inequitable, unduly burdensome and contrary to the public interest. Thus, good cause has been shown for grant of the requested waiver of Section 27.14(o) and the extension of the EBS substantial service deadline until November 1, 2011.

Respectfully submitted,

Clearwire Corporation

By: \_\_\_\_\_/s/  
Cathleen A. Massey  
Vice President, Regulatory Affairs  
& Public Policy  
Nadja Sodos-Wallace  
Senior Regulatory Counsel  
1250 I Street, N.W.  
Suite 901  
Washington, D.C. 20005

February 22, 2011